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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

RONALD DUNN,

Plaintiff and Appellant,

v.

SAN FRANCISCO HOUSING  
AUTHORITY and ABDU BESHIR,

Defendants and Respondents.

A150698

(San Francisco County  
Super. Ct. No. CGC-15-546671)

Appellant Ronald Dunn (Dunn) appeals from an order denying his motion to disqualify attorney Kevin K. Cholakian and his firm, Cholakian & Associates (collectively, Cholakian), from representing respondents the San Francisco Housing Authority (SFHA) and Abdu Beshir (Beshir). We affirm the trial court's ruling denying Dunn's motion to disqualify Cholakian, because no substantial relationship exists between Cholakian's prior representation of Dunn and his current representation of respondents, and Dunn did not establish that he shared confidential information with Cholakian that may be material to the current representation.

**BACKGROUND**

**A. The Prior Representation**

The SFHA employed Dunn as a painter. In 2011, public-housing tenant Toshia Holloway filed a complaint against the SFHA and Dunn alleging that, on March 7, 2011, Dunn sexually assaulted, battered, and falsely imprisoned her (the *Holloway* action). The SFHA determined that Holloway's charges were baseless, and Cholakian defended Dunn

and the SFHA. The trial court dismissed the case with prejudice in April 2013, after Holloway agreed to settle for a voluntary waiver of costs.

## **B. The Current Representation**

On July 31, 2014, while on the job, Dunn confronted his co-worker, Beshir, after Beshir complained to a supervisor about Dunn smoking on the job. Dunn called Beshir obscene names, pushed him into a water heater, and removed Beshir's hat from his head and dipped it into wet paint. Beshir filed an incident report with the SFHA and a police report.

The SFHA completed an investigation of the incident, suspended Dunn, and issued a notice of intent to terminate his employment, effective December 11, 2014. A pre-disciplinary *Skelly*<sup>1</sup> hearing was conducted, and the *Skelly* officer upheld the SFHA's decision to terminate Dunn. Dunn appealed the matter to arbitration, and the arbitrator upheld Dunn's termination.

Following rejection of his government claim and his receipt of a right-to-sue letter from the Department of Fair Employment and Housing and the Equal Employment Opportunity Commission, Dunn filed a complaint in this case against the SFHA and Beshir for wrongful termination; harassment and creation of a hostile work environment; violation of Government Code section 12940, subdivision (i); defamation; negligent supervision and retention; and intentional infliction of emotional distress. Respondents retained Cholakian to represent them, and Beshir cross-complained against Dunn for assault and battery.

Approximately a year-and-a-half after filing suit, Dunn moved to disqualify Cholakian from representing the SFHA and Beshir. The trial court denied Dunn's motion. It found: "No substantial relationship exists between the earlier representation

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<sup>1</sup> A *Skelly* hearing must be provided to a public employee prior to the taking of certain disciplinary actions, such as termination. At a minimum, the employee must receive "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194, 215.)

of Mr. Dunn by the Cholakian firm and their current representation of defendants per *H.F. Abramson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal.App.3d 1445. The former and current representations are factually and legally distinct even though they each involve allegations of assault. There has been an insufficient showing that Mr. Cholakian or anyone at his firm learned or could have learned any information during the course of the former representation that is material to the current actions. Nor is there anything to suggest they learned Mr. Dunn’s policy or strategy related to litigation, as occurred in *Knight v. Ferguson* (2007) 149 Cal.App.4th 1207, 1215.” Dunn timely appealed.<sup>2</sup>

## DISCUSSION

The trial court’s ruling on a disqualification motion is generally reviewed for abuse of discretion. (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143.) “If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court’s express or implied findings supported by substantial evidence.” (*Ibid.*) Where no material disputed factual issues exist, however, we review the trial court’s determination as a question of law. (*Id.* at p. 1144.) Dunn argues that the trial court erred in denying his motion to disqualify Cholakian. We disagree.

Initially, we note that Dunn relies heavily on the American Bar Association (ABA) Model Rules of Professional Conduct and federal cases from outside of California to support his appeal. California has not adopted the ABA Model Rules of Professional Conduct; they “do not establish ethical standards in California . . . and have no legal force

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<sup>2</sup> The case was not stayed following Dunn’s appeal. The trial court subsequently granted respondents’ motion for summary adjudication of the claims against the SFHA and awarded the SFHA its costs, and Beshir and Dunn appear to have settled prior to trial. Although the settlement may moot this appeal as to Beshir (see *Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1179–1180), Dunn presents a live controversy with his claim that prejudicial error requires the reversal of all rulings in favor of the SFHA that occurred after the trial court denied his disqualification motion. We accordingly decide Dunn’s appeal on the merits.

of their own.” (*State Comp. Ins. Fund v. WPS, Inc.* (1999) 70 Cal.App.4th 644, 655–656.) This appeal must be decided according to California law governing conflicts of interest arising from an attorney’s successive representation of present and former clients.

Rule 3-310(E) of the California Rules of Professional Conduct<sup>3</sup> prohibits an attorney from accepting employment adverse to a former client where, by reason of the attorney’s prior representation of the former client, the attorney obtained confidential information material to the employment. Despite Dunn’s unsupported claim to the contrary, disqualification of counsel in successive representation situations is governed by the substantial relationship test even where an attorney jointly represented two clients and later represents one of these clients against the other. (*Johnson v. Superior Court* (1984) 159 Cal.App.3d 573, 578–580 [applying the substantial relationship test and denying the defendant’s motion to disqualify his ex-wife’s attorney who previously represented them both].) “Where the requisite substantial relationship between the subjects of the prior and the current representations can be demonstrated, access to confidential information by the attorney in the course of the first representation (relevant, by definition, to the second representation) is presumed and disqualification of the attorney’s representation of the second client is mandatory.” (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283, italics omitted.)

“ ‘[A] “substantial relationship” exists whenever the “subjects” of the prior and the current representations are linked in some rational manner. [Citations.]’ ” (*Knight v. Ferguson* (2007) 149 Cal.App.4th 1207, 1213.) “Thus, successive representations will be ‘substantially related’ when the evidence before the trial court supports a rational conclusion that information material to the evaluation, prosecution, settlement or accomplishment of the former representation given its factual and legal issues is also material to the evaluation, prosecution, settlement or accomplishment of the current

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<sup>3</sup> The California Rules of Professional Conduct were revised effective November 1, 2018, and rule 1.9 of the California Rules of Professional Conduct now governs an attorney’s duties to former clients. This opinion relies on the former rules effective at the time of Dunn’s disqualification motion and case law interpreting those rules.

representation given its factual and legal issues.” (*Jessen v. Hartford Casualty Ins. Co.* (2003) 111 Cal.App.4th 698, 712.) The court should focus on the factual similarities involved in the two representations, the legal questions posed, and the nature and extent of the attorney’s involvement in each case. (*Pour Le Bebe, Inc. v. Guess? Inc.* (2003) 112 Cal.App.4th 810, 823.)

Based on the undisputed facts regarding the prior and current representations, the trial court correctly found that no substantial relationship exists between the two. *Holloway* involved claims that Dunn assaulted, sexually battered, and falsely imprisoned a woman in 2011, and the case settled in 2013. The current action arose years later, after the SFHA terminated Dunn for physically assaulting his co-worker. The incidents have no apparent connection. Although both involved some allegations of assault, the circumstances of the assaults differ vastly, the victims were different, and the incidents occurred years apart. Indeed, Dunn conceded at the hearing on his disqualification motion that allegations of assault in both cases do not create a substantial relationship. Because the claims in this case have no logical relation to *Holloway*, the conclusion cannot rationally be drawn that information material to the former representation is also material to the current representation.

Absent a substantial relationship between the representations, there is no presumption that Dunn shared material confidential information with Cholakian (see *Banning Ranch Conservancy v. Superior Court* (2011) 193 Cal.App.4th 903, 918), and the trial court correctly recognized that Dunn failed to establish that he had in fact done so. Dunn made only a conclusory assertion that he shared confidential information with Cholakian. A party seeking disqualification is not required to disclose the purported confidential communications, but conclusory statements that a former client conveyed confidential material information such as Dunn’s are insufficient. (See *Khani v. Ford Motor Co.* (2013) 215 Cal.App.4th 916, 922.)

Finally, we reject Dunn’s contention that the trial court’s ruling was not adequately supported by reasoned justification. A trial court’s exercise of discretion on a motion to disqualify counsel must be supported by sufficient reason and consistent with

appropriate legal principles and policies. (*McPherson v. Michaels Co.* (2002) 96 Cal.App.4th 843, 851.) Here, the trial court explained to Dunn at the hearing on the disqualification motion that Dunn had failed to establish that the representations at issue were substantially related, and further noted that Dunn had provided only a conclusory assertion that he shared confidential information with Cholakian. The trial court then issued a written order explaining the same accurate conclusions. No more is necessary.

#### **DISPOSITION**

The trial court's order denying Dunn's motion to disqualify Cholakian is affirmed.

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BROWN, J.

WE CONCUR:

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POLLAK, P. J.

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TUCHER, J.